

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY
MINUTES OF A PUBLIC HEARING**

DATE June 25, 2003
TIME 7:00 P.M.
PLACE CO. OFFICE BLDG.
20 N. 3RD STREET
LAFAYETTE IN 47901

MEMBERS PRESENT

Ralph Webb
Mark Hermodson
Edward Weast
Steve Clevenger
Gary Schroeder

MEMBERS ABSENT

Bruce Junius
Jean Hall

STAFF PRESENT

James Hawley
Sallie Fahey
Krista Trout
Jay Seeger, Atty.
Michelle D'Andrea

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 26th day of June 2003, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Mark Hermodson called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes of the May 28, 2003 public hearing. Edward Weast seconded and the motion was carried by voice vote.

II. NEW BUSINESS

Sallie Fahey informed the Board that all the cases were ready to be heard.

III. PUBLIC HEARING

Gary Schroeder moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the application to be heard this evening and responses from the checkpoint agencies. Edward Weast seconded and the motion carried by voice vote.

Mark Hermodson read the meeting procedures.

1. **BZA-1634—HAWKINS OUTDOOR:** Petitioner is seeking a variance to allow an outdoor advertising sign (billboard) to be constructed in the GB zone 193' from a residential use instead of the required 300', on property located at the northwest corner of CR 600 N and SR 43 N, Tippecanoe 21(SE)24-4. (UZO 4-8-10(b)) CONTINUED FROM THE MAY MEETING BECAUSE OF LACK OF SIGN POSTING. THIS IS THE LAST CONTINUANCE. WITH CONDITION

Gary Schroeder moved to hear and vote on the above-described request. Edward Weast seconded the motion.

Sallie Fahey presented slides of the zoning map, aerial, site plan, sign elevation and 4 photographs. She read the staff report with recommendation of denial. She read into the record the following letters of opposition:

James R. Dammon P.E., 6237 State Road 43 North, West Lafayette, IN.
Richard A. Boehning, 224 Sheffield Road, West Lafayette, IN.

Joseph T. Bumbleburg, PO Box 1535, Lafayette, IN. presented pictures of the site to the Board. He mentioned that the proposed use is fair because the site is zoned GB. He stated that this is a classic part of the interstate business node and this site has always been business. He pointed out that the mobile home adjacent to this property is most likely a non-conforming building use. He said that this request is not injurious to the public health, safety and welfare of the community. He stated that there is no evidence that this would have an adverse effect on use and value. He pointed out that although this property is zoned GB, it is not a common piece of ground because it is in an interstate area. He said that this piece of property would be deprived of the benefits of a general business use. He reiterated that there is no adverse effect on the area. He pointed out that this is the kind of use that the Commission has always tried to restrict to this type of area. He said that this sign would comply with regulation, keeping the signs together and be in an appropriate area. He asked for approval.

James Miller, 131 North Railroad, Battle Ground, IN. read the following letter of opposition into the record: Battle Ground Town Council, Carloyn Roth, President, PO Box 303, Battle Ground, IN.

Ralph Webb asked if the mobile home on the adjacent property was a non-conforming use. He asked if there were other homes within 300 feet and if so how many. He asked how far away the properties of James Dammon and Richard Boehning were.

Sallie Fahey pointed out on the aerial photo 3 residences that could possibly be within 300-feet. She stated that she did not have the exact number of homes within that distance. She pointed out the properties of James Dammon and Richard Boehning.

Mark Hermodson asked if the adjacent mobile home was non-conforming.

Sallie Fahey pointed out where the GB boundary was and stated that the mobile home was probably just inside the GB zone.

Mark Hermodson agreed with the letter that James Miller read. He mentioned that the standards were determined by a long debate process at the time the Zoning Ordinance was written.

The Board voted by ballot 0 to grant -5 to deny thus denying **BZA-1634—HAWKINS OUTDOOR**

2. **BZA-1640—REGINALD L. & LAURA J. ROY:** Petitioners are seeking a special exception to legitimize a plumbing contracting business (SIC 1711) in the A zone on 1.71 acres, operating Monday through Friday from 7am until 6:30pm and on Saturday from 7am until 3pm. The filing of this request predates the adoption of UZO Amendment 36. On property located at 1305 E 750 S, Wea 33(SW)22-4. (UZO 3-2) WITH CONDITIONS AND COMMITMENT.

Gary Schroeder moved to hear and vote on the above-described request. Edward Weast seconded the motion.

Sallie Fahey presented slides of the zoning map, aerial, site plan and 4 photographs. She read the staff report with recommendation of conditional primary approval contingent on the following:

Conditions:

1. A new building permit must be issued.
2. The proper inspection for construction must be completed
3. A certificate of Occupancy must be issued

Commitment:

1. No delivery of products for this use may be by semi tractor-trailer.

Randy Williams, PO Box 1535, Lafayette, IN. stated that the petitioners were present. He said that the staff was accurate and asked that the Board review the report and take it into consideration. He mentioned that the petition does meet all the requirements of the Ordinance. He presented pictures to the Board that were taken the day before the meeting. He said that a continuance was requested at the May meeting in order to

address some of the concerns of the neighbors in the area and it was assumed that the citizen concerns would be presented to the petitioners and they were not. He stressed that he and the petitioners offered an opportunity to meet with the neighbors in opposition and the offer was declined. He mentioned that the people in opposition informed him that they had drafted a letter containing their concerns and conditions, which was never presented to the petitioner until a few minutes before the hearing. He informed the Board that the petitioners have lived on this site since 1996, owned and operated the business since 1995 and the pole barn was built in 1997. He explained that the pole barn was originally constructed for personal use and over time gradually became used for the business. He stated that the Commitment set forth in the staff report regarding no deliveries by semi truck has already been addressed. He explained that the petitioner has already contacted the one supplier who uses a semi and instructed them that semi deliveries will not be accepted. He stated that if the number of employees changes then the parking would have to change. He pointed out that because of that the number of employees would never change, but who the employees are might. He informed the Board that there are currently 5 employees, two employees drive company trucks home, and all employees are gone from the site by 7:20 am. He pointed out that one employee lives down the street, walks to work and picks up a truck, two other employees are brothers and ride together. He explained that at the end of the workday, there would be three business vehicles at the site. He stated that one of the requests was to move the parking to the back of the building and that has been addressed on the revised site plan. He said that the petitioner personally owns 5 vehicles; some of them are classic cars. He explained that in some of the pictures that will be presented by the opposition, there are extra cars, one belongs to him, one to a visiting relative and one to a man that is currently painting the house, and therefore three of the cars are temporary. He reiterated that the deliveries by semi trucks would cease even though this is a farming area frequented by grain trucks, tractor-trailer, tractors, UPS trucks and Waste Management trucks. He stated that petitioners have completed the driveway permit application for the entrance onto CR 125 and are ready to submit it pending on the outcome of this meeting. He explained where the driveway would be on the property and where it would connect to CR 125. He reiterated that the conditions and commitment were not a problem to fulfill.

Warren Ardapple, 1407 E. 750 S. Lafayette, IN, stated that he lives next door to the petitioner and is the closest neighbor. He said that he was in favor of this request and the petitioner has been an excellent neighbor. He mentioned all the improvements, additions and cleaning up that the petitioner has done to his property. He stressed that the petitioner has greatly improved the value of the property, which in effect improves the value of his property. He reiterated that he has been an excellent neighbor. He stated that there has not been any traffic that has negatively affected the road. He said that he has lived there for 40 years and he has had more problems with traffic from grain trucks and farm equipment than from this business.

Jessica Ardapple, 1407 E 750 S, Lafayette, IN, stated that she was speaking on behalf of her mother. Betty Ardapple, who was waiting in the car, due to illness. She informed the Board that her mother asked her to convey that she is home all the time and sees very little traffic. She said that of all the people who have lived in that house in the past 20 years, the petitioners are the only ones who have made improvements to it. She mentioned that the petitioners have also helped make improvements on Mr. and Mrs. Ardapple's property. She stated that if necessary Betty Ardapple would walk in and acknowledge that she was speaking on her behalf.

Timothy Temple, 7535 S. 125 E., Lafayette, IN, stated that his property butts up to the back of the petitioners. He informed the Board that he has been a neighbor of the petitioner for seven years, an employee for one year and is the one who walks to work. He said that the petitioner has done a lot for the property and the surrounding area. He asked for approval.

Brad Glass, Stuart & Branigin, 300 Main Street, Suite 800, Lafayette, IN, stated that he represented a group of concerned neighbors who live on 750 South and 125 East. He presented a packet of information to the Board. He said that this group of neighbors is opposed to this petition for four reasons; 1) The plumbing business does not fit with the existing residential development in the area, with the Comprehensive Plan or with the future growth of Lafayette. He pointed out that the nature of special exceptions is for the Board to determine whether something fits into an area not, and this does not fit. He stated that this area is zoned

agricultural, but the primary use of the road is very residential. He said that with this business in the area there is increased traffic, increased waste, delivery trucks that shut down the road and unsightly storage of vehicles on the site. 2) He pointed out that this petition leaves many unanswered questions. He referred to the last page of the handout which contained the site plan submitted to the Area Plan office, and pointed out 5 discrepancies: the County drainage ditch on this site that was omitted and would affect the parking and the general use of the property; the addition to the house was omitted and possibly did not meet the side setback requirements; the pool was omitted; the propane tank was omitted and the parking plan does not address the flow of traffic, public accesses, does not meet the parking provisions of the ordinance and it is not shown whether the spaces will fit in the area or if they are to scale. He stated that it was not known whether the number of employees was an accurate figure. He explained that the original number was 3, the number reported tonight was 5 and the newspaper reported 5 employees in addition to the petitioners, which would make it 7. He stated that if the number of employees were 7 then the required number of parking spaces would rise to 9 spaces. 3) He informed the Board that the petitioners have failed to comply with numerous zoning and building regulations to date. He explained that in 1996 they failed contact the Area Plan office regarding the use of their land for business, they have operated a junkyard on the site, they designated the pole barn as personal use and did not have it legally changed to business use. 4) He referred to the earlier comment by the petitioner's representative stating that they have already discontinued semi truck deliveries, and pointed out a picture in the packet of a semi making a delivery the day before. He stated that the special exception would have a substantial and material adverse affect on the neighbors, public health, safety and general welfare. He said that the traffic has added a significant amount of additional traffic to this thin, country gravel road. He reiterated that this business does not fit with the area. He pointed out that this site is at the bottom of a blind hill and is very dangerous. He stated that the petitioners mentioned that they intended to open an entrance onto 125 E. and have actually already opened it, without the proper permits. He asked for denial. He pointed out that the second page of the handout has a list of additional conditions that the neighbors have suggested.

Janet Frey, 1135 E. 750 S., Lafayette, IN., stated that she has lived at this address for 41 years and is directly west of the petitioners. She said that her major concern regarding this business is the traffic. She mentioned that the comment that the employees come to work and leave by 7:20 and do not return until the evening is not accurate. She stated that the employees come to work as early as 6:15 am and frequently return to the site during the course of the day. She pointed out that the petition requests business hours of 7 am – 6:30 pm Monday – Friday, 7 am – 3 pm on Saturday and in the week before the meeting, employees were coming home at 8:45 pm and 5:45 on a Saturday. She said that the traffic includes pickup trucks, vans and a large cargo truck. She mentioned that this is very heavy traffic for a County Road that is very narrow, has may blind spots, and a dangerous hill. She said that this road is adequate for residential traffic but not for business. She asked for denial.

Gretchen Verhoeven, 1501 E. 750 S., Lafayette, IN., stated that she has lived there for 20 years and the petitioners are very nice neighbors but a business does not belong in this area. She said one concern that should be considered is that the school bus uses the same road as the business at 7:30 in the morning and it is very dangerous.

Nancy Wilcox, 1630 E. 750 S., Lafayette, IN., stated that she has lived at this location for 24 years. She pointed out that on occasion the neighbors have to take on the responsibility of clearing the snow because the County does not get to it right away. She mentioned that the rain washes away the road and trenches have to be dug to drain the water off the road. She presented pictures to the Board showing the road during the last heavy rain. She pointed out that the neighbors pay to oil the road and she is not interested in paying for commercial vehicles. She stated that Industrial Parks were built for the purpose of small businesses such as this. She reiterated that the road was very narrow and not adequate for commercial trucks.

Robert Leavitt, 1821 E. 750 S., Lafayette, IN., stated that he has lived at this location for 34 years. He reiterated that the road is very narrow, twisty and hilly. He explained that all the neighbors and farm equipment drivers understand that they have to cooperate when using the road, but strangers and delivery drivers do not understand that. He asked for denial. He commented that this business has already outgrown this site.

Jerry Rupright, 7714 S. 125 E., Lafayette, IN. stated that his perception was that the business was located in town and an employee lived at the petitioners' address. He said that it was upsetting to find out that they have never had the proper zoning and not followed other zoning and building laws. He stated that this is possibly the worst location within a 4-block area for a business to be located. He said that relocating the driveway to 125 E. would not make it any safer. He concurred that the petitioners are good neighbors.

Elizabeth Ray, 3618 Golden Lane, Lafayette, IN. stated that she is currently a landowner in this area, lived in the area for 30 years and currently lives in town. She informed the Board that she was almost in an accident with someone from the petitioner's location. She stated that she is opposed to this petition because the road is too narrow and not fit for a business.

Phillip Wilcox, 1630 750 S., Lafayette, IN. stated that he has lived at this location for 24 years. He asked that the petition be denied due to the traffic issues. He concurred that the petitioners were good neighbors, but this was not an appropriate spot for a business. He urged the Board to vote no.

Jean Leavitt, 1821 E. 750 S., Lafayette, IN. stated that she has lived at this location for 27 years. She said that she concurs with all previous comments and asked for denial.

Randy Williams informed the Board that this business did not bother any of the neighbors when they used the petitioners business for their own plumbing problems. He read off the dates of service from 13 separate invoices from 7 different neighbors. He pointed out that Gretchen Verhoeven, who spoke in opposition of the petition, used the petitioners' business for her own business which also based out of her own home. He mentioned that this case was triggered by a personal issue and therefore would not elaborate on it. He referred to Brad Glass's comment that this business does not fit the area or the Comprehensive Plan, and pointed out that the staff found that it did fit. He said that if there were questions that were not answered, then they were questions that were never raised, even by the Area Plan staff. He pointed out that the issues of the pool and house addition had nothing to do the business. He concurred that there was a period during which the petitioners failed to comply and during that time there were not any complaints because the petitioner was performing work for the neighbors. He stated that the house addition complied with all building codes, all necessary permits were obtained and County officials inspected the construction. He said that at one time there was a pile of dirt in the yard, which is where an LP gas tank was buried and is now filled in, smoothed over and hopefully grass will grow soon. He informed the Board that the semi truck that made a delivery a few days earlier was not a full size and not the normal delivery vendor. He reiterated that the normal delivery vendor has been notified not to use a semi truck. He mentioned that the petitioner has 3 small children who will be riding the school bus and the petitioners would never create an unsafe situation for their children. He stated that the petitioners are willing and able to meet all conditions and commitments set forth by the staff. He said that the petitioners are committed to following the business hours set forth and mentioned that this is the busy time of year and winter months are not as busy. He presented pictures to the Board of neighboring properties that show that this is a farm community. He pointed out that down the road there is a tower that received a special exception and a variance in 1983. He requested the same consideration.

Steve Clevenger asked how the petitioners were planning on enforcing the hours of operation.

Reginald Roy, 1305 East 750 South, Lafayette, IN. stated that the employees never come to work at 6:15 in the morning. He said that the employees come to work about 6:55 and are gone again by 7:20. He concurred that on a rare occasion, if their job site is closer to the petitioners' house than to the show room in town, they will come back during the course of the day to pick up supplies. He stated that there are never any customers that come to the home and everything is shown at their showroom in town. He informed the Board that they are in the process of putting up a no soliciting sign. He stated that they have no need to advertise and no need for any type of sign. He said that he and his wife have 5 employees and would never have a need for anymore. He stated that he does not need nor intend for the business to grow any more, or to buy any more trucks. He mentioned that they would do whatever it takes to follow the rules. He pointed

out that if the driveway access is on 125 E, that will eliminate all the dangerous traffic that every one is talking about.

Steve Clevenger asked what type of vehicle the supplier would be using since they were instructed to stop using semi trucks.

Reginald Roy stated that they would be using a flat truck, which is a little bigger than a UPS truck. He mentioned that the delivery a few days earlier was unscheduled and the carrier was unknown. He pointed out that it was not a full semi truck; it was about half the size of a semi.

Steve Clevenger asked if they had a plan to contact other carriers to inform them that semis were not allowed.

Reginald Roy replied affirmatively. He stated that every time an order is place provisions will be made when the supplier names a carrier. He mentioned that there is plenty of room in the back for a turnaround, and they are even willing to put in a slab. He explained that traffic would be able to enter and exit 125 E face forward and there should be no backing out or in.

Ralph Webb pointed out that both parties seemed like reasonable and honorable people. He mentioned that the people in opposition have submitted a list of conditions, many of which are beyond the control of this Board. He suggested that these were issues that might be negotiated between the two parties. He pointed out that even if all the conditions in the letter and the conditions set forth by the staff were imposed; there are still people in opposition that do not feel this business fits in the area. He asked if there was any way that this situation could be negotiated to the satisfaction of both parties.

Randy Williams stated that the petitioners asked for a continuance last month because they were told that the remonstrators' wanted to talk. He informed the Board that when he tried to talk with the remonstrator's attorney, he was told that they did not want to talk nor provide him with the letter of conditions. He mentioned that he received an anonymous fax from a neighbor and the majority of those concerns were addressed. He reiterated that they asked for a continuance last month in the hope of talking with the remonstrators to work out some issues; no one was interested in talking to him or the petitioner.

Brad Glass stated that there is no way to make the road safe even with these conditions. He explained that these conditions were restrictions that the neighbors could live with only if they have to. He stated that the preference is that the business not be placed there because it is not the right place for it. He pointed out that the petitioner already has a showroom in town and it would not be a hardship for them to rent a space to store their supplies and park their trucks. He explained that that was the reason they were unwilling to discuss this matter. He stated that his clients would like this matter resolved one way or the other and do not want to have to come back to the Board for enforcement of the conditions.

The Board voted by ballot 3 to grant – 2 to deny on **BZA-1640—REGINALD L. & LAURA J. ROY.**

Yes Votes

Edward Weast
Steve Clevenger
Mark Hermodson

No votes

Ralph Webb
Gary Schroeder

Mark Hermodson stated that this case would be heard at the July 23, 2003 meeting due to lack of a majority vote.

3. **BZA-1641—CHARLES R. & SUSAN G. CURTIS:** Petitioners are seeking a special exception to legitimize an excavating contracting business (SIC 1794) in the A zone on 5 acres, operating seven days a week from 6am until 7pm. The filing of this request does not predate the adoption of UZO Amendment 36; therefore, it applies. On property located at 424 W 900 N, Tippecanoe 6(SW)24-4. (UZO 3-2) WITH CONDITION.

Gary Schroeder moved to hear and vote on the above-described request. Edward Weast seconded the motion.

Krista Trout presented slides of the zoning map, aerial, site plan and 3 photographs. She read the staff report with recommendation of conditional approval based on the following condition:

1. The required four parking spaces must be added to the site plan

Joseph T. Bumbleburg stated that the petitioners were present. He gave a history of this case, starting about one year ago when Al Levy issued a citation letter. He explained that at the time the petitioners were unaware that they were in violation. He informed the Board that the business sign was taken down as soon as the letter was received. He mentioned that the issue of the junkyard was still under discussion in the Ordinance Committee meetings, but has been resolved on this property. He informed the Board that the Commissioners, Al Levy, the Ordinance Committee and himself spent many months revising the ordinance, which permitted the filing of this special exception. He pointed out that the petitioners planted most of the trees shown on the site plan. He informed the Board that Krista Trout personally visited and reviewed the site. He mentioned that there was a letter in the file that Krista Trout would be reading that stated the author does not think any further buildings should be constructed on this site. He pointed out that although there were no plans to build another building, the current buildings occupied about 2% of the site. He stated that all of the ordinance requirements can and have been met.

Krista Trout read into the record the following letter in opposition:

Lynn and Kathleen Brooke, 605 W. 900 N. West Lafayette, IN.

Steve Robinson, 8 East 900 North, West Lafayette, IN. stated that he has lived and farmed at this site for 30 years. He explained that he sold this property to the petitioners 30 years ago with the request that they not raise hogs and it looks nice. He said that both those requests were met. He informed the Board that the petitioners' property always looks nice; there is never any noise and no additional traffic from his business.

The Board voted by ballot 5 to grant –0 to deny thus approving **BZA-1641—CHARLES R. & SUSAN G. CURTIS.**

Mark Hermodson stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

IV. ADMINISTRATIVE MATTERS

Steve Clevenger stated that the power point presentation went well.

V. ADJOURNMENT

Gary Schroeder moved to adjourn the meeting. Edward Weast seconded and the motion carried by voice vote.

The meeting adjourned at 8:40 P.M.

Respectfully submitted,



Michelle D'Andrea
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Assistant Director